

From the Capitol

7/12/2011 [James G. Cavanagh](#)

Legislature Recesses For Summer

The Michigan Legislature began its summer vacation late on June 30. While scheduled to meet for one day in July and one in August, legislators won't return full time until after Labor Day.

Even though one political party dominates state government, thus making it "easier" to get things done, the record of this legislature is still impressive. The GOP Majority has taken on one controversial issue after another with a party discipline seldom seen in Lansing. It is easy to maintain discipline when the game is defense. It is much more difficult when the proposed initiatives are from either a governor or members of the majority party and the issues are controversial. In spite of protests and recall efforts, the GOP, for the most part, has held firm.

Agree with the policies or not, **Governor Snyder** and Legislature have acted boldly and decisively. They have used the mandate from the 2010 election and placed Michigan on a new course. This is due in large measure to a crack staff in the Executive Office and strong legislative leadership. At least for the first six months of his administration, the Snyder dashboard belongs in the Cadillac.

The Snyder Agenda -- Issue By Issue

Unemployment Compensation

Early in the legislative session, **Rep. Jim Stamas** (R-Midland) introduced **House Bill 4408** which called for the creation of a special fund within the Department of Treasury whose specific purpose was to purchase computer software to detect fraud, abuse and waste. The bill also was used as a vehicle to extend state unemployment compensation benefits but also cut 6 weeks from the 26-week time period. This saves Michigan business tens of millions of dollars. The bill was signed by the Governor in late March and is now **Public Act 14 of 2011**.

Item Pricing

Repeal of Michigan's 30-year-old item pricing law was a priority for **Governor Snyder**. He specifically targeted it in his State of the State address in January. Repeal also was a priority of the Michigan Chamber of Commerce and the Michigan Retailers Association. With relative ease, **House Bill 4158** became **Public Act 15 of 2011**.

Emergency Managers

When **Governor Snyder** took office on January 1, several Michigan communities and school districts were teetering on the brink of financial insolvency. Indeed, Detroit Public Schools and the cities of Pontiac and Benton Harbor were already being overseen by “emergency financial managers.”

The goal of **Governor Snyder’s** Administration was to strengthen and streamline the law. The spokesperson for reform is the new State Treasurer and former Democratic Speaker of the House **Andy Dillon**. The series of House Bills (HBs 4214, 4216, 4217 and 4218) were introduced in February and were eventually signed into law in late March, the same day organized labor was holding a large protest rally at the State Capitol.

The bills, which became **Public Act 4 of 2011**:

- Renamed “emergency financial managers” to just “emergency managers” to indicate greater control
- Gave broad power to an emergency manager, including the power to void collective bargaining agreements and to overrule locally elected officials
- Enables an emergency manager, with the consent of the governor, to disband communities

A drive to repeal the laws has been undertaken with the help of organized labor. In addition, the laws will most assuredly be tested in court on questions of whether they violate a individual’s voting franchise and impair existing contracts.

Warner Norcross & Judd also has created a clearinghouse of news stories and other information on the law. Access it [here](#).

A Budget In Record Time

The **Governor** presented his Executive Budget to the legislature in mid-February and successfully challenged lawmakers to pass it and have it on his desk by May 31. The budget assumed or depended upon a number of initiatives that would wend their way though the legislative process along with the budget itself.

The Legislature agreed with the governor and slashed the School Aid Fund state aid to colleges and universities and eliminated local revenue sharing as we have come to know it. Instead of appropriating funds for local governments, funding would be linked to results-oriented performance,

resulting in taxpayer savings. One such criteria is consolidation of services with adjoining communities. In addition, local governments would have to show that they pay no more than 80 percent of an employee's health care premium. Despite loud public outcry by many local officials and public employee unions, the revenue-sharing reforms passed quickly.

Business and Personal Income Tax

As a candidate for governor, **Rick Snyder** time and time again advocated for repeal of the Michigan Business Tax (MBT) and wanted to replace it with a flat 6-percent tax on business income. That's exactly what happened.

Here are highlights of the tax overhaul:

- Elimination of the MBT with its two-tiered tax on income and gross receipts
- Putting in its place a 6-percent flat tax on income for "C" corporations making \$350,000 or more
- Eliminating state income tax on pass-through entities such as limited liability companies and partnerships
- Eliminating a host of business credits; brownfield credits and others are being reworked and subject to legislative appropriation
- Continuing the personal income tax rollback until it reaches 4.25 percent and freezing it at that level
- Elimination of tax credits on personal income
- Instituting a new three-tiered phase-in tax on pension income
- Significant reduction in the Earned Income Tax Credit (the governor originally called for its elimination entirely)

In short, we have the most sweeping changes in Michigan tax policy in more than 30 years.

Shift In School Funding

In his Budget Message, **Governor Snyder** proposed using \$900 million from the School Aid Fund to help fund community colleges and public universities. Traditionally, aid for college and universities has come from the General Fund. In spite of significant protest from the K-12 lobby, the legislature agreed to use approximately half the amount proposed for that purpose.

Changes to Public Employee Binding Arbitration

Another proposal called for by **Governor Snyder** also was approved by the Legislature. When local governments and their public safety employees cannot resolve contract disputes, the ability of the municipality to afford the provision will become the primary factor to be considered by the arbitrator.

Teacher Tenure Changes

In his special message on education reform in April, the governor proposed changes in Michigan's teacher tenure law. On the day before the summer recess, the House concurred with Senate substitutes to **House Bills 4625 and 4626** which would, among other things:

- Increase a teacher's probationary period from 4 to 5 years
- Reduce notification time to a teacher whose services will be terminated from 60 days to 15 days prior to the end of the school year
- Allow a probationary teacher to be dismissed at any time
- Require a tenure hearing to be completed within 60 days rather than 90 days
- Revise the standard for dismissal of a tenured teacher
- Require the school board to adopt a policy for the placement of teachers based on the mutual consent of the teacher and school principal
- Change policies so that seniority is no longer a primary factor on who is laid off
- Establish requirements for an annual teacher evaluation system
- Require year-end evaluations for teachers and administrators to be based 25 percent on student growth and assessment data in 2013-2014 and 49 percent by 2014-2015

These bills will soon be presented to the governor for his signature.

Public Employee Health Care Benefits

Early in the session, **Sen. Mark Jansen** introduced **Senate Bill 7** which placed an 80-percent cap on the amount a public employer could contribute toward the health care benefits of a public employee. On its way through the House, the bill was substituted to call for an actual dollar cap of \$5,500 for single-person coverage, \$11,000 for individual and spouse coverage, \$12,500 for individual and child or children coverage, or \$15,000 for family coverage.

These caps would be adjusted annually by the State Treasurer using the Consumer Price Index. In the alternative, a local public employer, by a majority vote of its governing body, could opt for the original Senate Bill 7 language – the 80 percent figure. Senate concurrence is expected soon.

Thereafter, the governor is expected to approve the bill.

What's In the On-Deck Circle?

A Bridge to the 21st Century

One of the biggest issues facing the Legislature is consideration of a new span across the Detroit River. The construction of a new bridge between Windsor and Detroit has been discussed, studied and argued for more than a decade.

First called the Detroit River International Crossing (DRIC), it is now called the New International Trade Crossing (NITC). Governor Snyder became a surprisingly strong advocate for NITC in his January State of the State Address. He also went to Washington to get assurances that the \$550 million Canada is to pay to cover Michigan costs associated with the project could be used by the State as its contribution toward federal transportation matching funds.

On the other hand, the owners of the only game in town, the Ambassador Bridge, have been waging an intense political campaign aimed at the Legislature to prevent construction of a government-owned bridge. On June 1, **Senate Bills 410 and 411** were introduced by **Senate Majority Leader Randy Richardville** and assigned to the Senate Economic Development Committee. The plan is for hearings to take place over the summer, but the action intensifies this fall.

Claims Assessment Or Tax?

On the last day of session before the summer break, the Senate passed legislation which imposes a 1 percent tax or assessment (take your pick) on paid health care claims. This measure is meant to replace the current 6 percent use tax imposed on Medicaid HMOs, hospitals and nursing homes to draw down federal Medicaid matching funds.

The federal government has given every indication that the 6 percent tax would no longer be acceptable as a state revenue source to draw down federal matching funds. Instead, federal officials want the tax to be broad based so it affects all equally. Accordingly, Governor Snyder recommended the 1 percent replacement in his budget message. In fact, this year's budget assumed passage of the measure.

However, as June wore on, opponents of the measure -- essentially large employers who would be facing higher premiums -- organized to oppose the measure. The alternative to passing a 1 percent tax was to do nothing, have the federal government disqualify the use tax as a source of revenue, thereby creating a \$1.2 billion hole in the budget, which would lead to further cuts in Medicaid provider reimbursement rates.

For the Senate at least, the best alternative was the 1 percent tax. The legislation is with the House Appropriations Committee where hearings will be held this summer. While facing a tough fight in that chamber, the claims tax should eventually win the day.

State Employee Concessions

The budget that was just passed assumes more than \$140 million in concessions from public employee unions representing state workers. Those unions have given no indication they will agree to the concessions by the start of the fiscal year, October 1. It should make for an interesting fall.

Prior Authorization of Certain Mental Health Drugs

In order to realize a short term savings of approximately \$6 million, the budget calls for prior authorization for drugs used in the treatment of epilepsy and conditions affecting the central nervous system. House Bill 4733, which was introduced in June, would do just that. If pursued, it will lead to a battle royal between mental health organizations and the Snyder Administration.

Attracting Qualified Immigrants

As part of his State of the State Address, Governor Snyder proposed an initiative to attract professionals to immigrate to Michigan. As of this date, nothing has developed on this proposal. If something is to happen, it will occur this fall after the governor's message to the Legislature on developing talent in Michigan.

Other Issues

In the first 6 months, the legislature dealt with the most pressing priorities of **Governor Snyder's** Administration: those of tax and budget reform, enacting a budget and providing for contingency plans in the event a local government falls into insolvency. Now, the Legislature's attention will turn to social and labor issues such as:

- Greater restrictions on abortion
- Stricter laws on divorce, perhaps including a repeal of no-fault divorce
- Restrictions on same-sex couples being entitled to the health-care benefits earned through collective bargaining
- Right-to-work laws: allowing for right-to-work zones, either statewide or in specific locations
- Repeal of prevailing wage laws.

These and similar issues championed by the conservative wing of the Republican Party have been pent up for a number of years. A number of GOP members, especially first and second termers, are eager to enact these and other measures thwarted by Democrats for years.

The State of Politics In Michigan

Redistricting

The Legislature also dispensed with redistricting before its summer vacation. Redistricting is that once-a-decade ritual where one political party attempts to configure districts that will give it the best chance of maintaining its majority for the next decade. It is pure and brutal politics based upon raw power. Regardless of protests to the contrary by the minority party, both parties fully understand this.

Elections have consequences. One of the consequences of the Republican electoral tidal wave of 2010 was the opportunity to keep Democrats in the legislative minority for the next decade. Consequently, Senate and House Republicans acted quickly in drawing new congressional and state legislative district maps via **House Bill 4780** and **Senate Bill 498** and sending them to the Governor for his expected signature. Unless the Democrats are successful in a legal challenge, the districts will be as follows:

Congressional: Due to a decline in population over the past decade, Michigan loses one congressional seat. Instead of the current 15-member delegation, Michigan will have 14 and the casualty will be a Democrat. As expected, Republican mapmakers threw incumbent Democrats **Sander Levin** and **Gary Peters** into the same southern Oakland-Macomb County District. As configured, the Republicans would be favored to hold at least seven congressional seats, the Democrats would hold five seats with two classified as marginal or swing districts, although still statistically Republican.

State Senate: Republicans have held the majority in the state senate for nearly 28 years. With the new map, they intend to hold on for another decade. As drawn, the Republican candidate would be favored in 20 of the 38 districts with the Democratic Party candidate being favored in 12 districts. The other six districts are considered truly competitive with each Party's base hovering around 50 percent of the electorate.

State House: Each House district has a target population of nearly 89,000. There is some deviation, but Republican mapmakers kept it to just under 5 percent at most. As drawn, Republicans would be favored in 47 districts, Democrats in 42, and the remaining 21 would be competitive.

Republicans Under Recall Threat

One of the prices of having to govern in difficult times is having to make difficult decisions. Cutting business taxes, taxing pensions, granting sweeping powers to emergency and significantly cutting state aid to K-12 education has its consequences has upset a whole lot of people. With some financial backing, that anger can easily be channeled into **recall** efforts. This is what the governor and several Republican lawmakers now face.

The Republican majority is taking notice, especially as the **Michigan Education Association** offers financial and logistical support to the recall efforts, spurred by teacher tenure legislation.

It was the Republicans who made the modern recall effort what it is today. Back in 1983, when Democrats controlled each branch of state government, the Legislature voted on near party lines to temporarily raise the personal income tax. Republican operatives, at the direction of then Senate Minority Leader **John Engler**, used the opportunity to recall two Democratic state senators and replace them with Republicans. The Republicans have controlled that chamber ever since.

Don't look for that to occur this time as the Republican majorities in both chambers are too large to have the Democrats take control. What the recall effort does, however, is keep the Democratic Party's base energized and engaged for the 2012 election.

On The Horizon

The Michigan Manufacturers Association will make a push this fall for repeal or partial repeal of the personal property tax.

“Advanced practice nurses” such as nurse practitioners and nurse midwives will be making an effort to dramatically expand their scope of practice in answer to the real or perceived shortage of primary care physicians. The proposed expansion will include the ability to order, operate and interpret diagnostic tests, including imaging.

The Uniform Laws Commission will seek amendments to the Uniform Commercial Code and, specifically, Article 7 of the Code, to provide for electronic bills of lading.

Senate Bill 275 might see some action this fall. The bill amends the Natural Resources and Environmental Protection Act to rein in the Department of Environmental quality (DEQ) on some of its practices and procedures during the permit application process -- the “request for additional information” being the most notorious.

Senate Bill 450 is likely to pass the House. The bill would enable the state's Waste Reduction fund to

expend revenue credited to the Fund on the Permit to Install Program in the DEQ Air Quality Division.

Senate Bill 449 is slated for approval. It delays the October 1, 2011 sunset on the solid waste surcharge fee that is paid by landfill operators and increase the fee from 7 cents per yard to 12 cents per yard, with a sunset of September 30, 2013.